

**FOURTH AMENDMENT TO REAL ESTATE
PURCHASE AND SALE AGREEMENT**
[FATCO Escrow No. NCS-607165-PHX]
[CTIC Escrow No. C1406712]

THIS FOURTH AMENDMENT is made by the CITY OF FLAGSTAFF, an Arizona municipal corporation ("Seller"), and EVERGREEN-TRAX, LLC, an Arizona limited liability company ("Buyer"), to their Real Estate Purchase and Sale Agreement dated as of June 12, 2013, as modified by First, Second and Third Amendments (the "Third Amended Agreement"). Defined terms in the Third Amended Agreement have the same meanings in this Fourth Amendment:

1. Status. The Scheduled Closing Date is the first business day which is at least 31 days after any Solution Date, or any earlier date the Parties select. The Parties asked the current Escrow Agent, First American Title Insurance Company ("FATCO"), to delete or endorse over its RR Form Exception, but it declined to do so. The Parties hereby substitute Chicago Title Agency, Inc., an Arizona corporation ("CTA"), as Escrow Agent, and approve its affiliate Chicago Title Insurance Company, a Nebraska corporation ("CTIC"), as underwriter, and request a new Title Commitment to resolve any RR Form Exception. Any date such a new Title Commitment is obtained from or committed by CTIC will be a "Solution Date." The Parties authorize and direct FATCO to pay to CTIC any of the Deposit in FATCO's possession, including any interest earned thereon, all of which will remain part of the Earnest Money.

2. Deed. To help satisfy CTIC's requirements, and effect a Solution Date, the Parties modify the form and substance of the deed attached to the Third Amended Agreement to be in the form attached hereto as *Exhibit B-1*.

3. RR Form Exception. Any RR Form Exception will be modified to be the "identified risk" described in the following sentence. Buyer approves a modified RR Form Endorsement [ALTA 34.06] with: (a) the "identified risk" being any "Claim" described in *Exhibit B-1* hereto; and (b) Paragraph 3 thereof [to any extent relevant to litigation defense costs, fees and expenses] being deleted, and CTIC having the right to approve any counsel selected by Seller or an Insured to establish Title, such approval not to be unreasonably withheld. Seller will not be an Insured.

4. CTA. CTA's address and number for notices are Chicago Title Agency, Inc., 2390 East Camelback Road, Suite 120, Phoenix, Arizona 85016, Attn: Melissa Cocanower, Branch Manager, Phone: 602-553-4806, E-mail: melissa.cocanower@CTT.com.

5. Miscellaneous. Telecommunicated copies of signed counterparts of this Fourth Amendment will constitute originals. References in the Third Amended Agreement to the Third Amended Agreement are amended to refer to the Third Amended Agreement as modified by this Fourth Amendment. As so modified, the Third Amended Agreement will remain in effect.

DATED as of _____, 2014.

CITY OF FLAGSTAFF

By _____
Gerald W. Nabours, Mayor

EVERGREEN-TRAX, LLC

By _____
Laura Ortiz, Authorized Agent

Attest:

City Clerk

Approved as to Form:

City Attorney

Escrow Agent Acceptance

The substituted Escrow Agent has received fully executed copies of the Third Amended Agreement and counterparts of this Fourth Amendment on _____, 2014, accepts the above appointment, and is returning copies of this Fourth Amendment by telecommunication to each of the Parties.

CHICAGO TITLE AGENCY, INC.

By _____
Melissa Cocanower, Branch Manager
& Commercial Escrow Officer

When Recorded, Return To:

Evergreen Devco, Inc.
2390 East Camelback Road, Suite 410
Phoenix, Arizona 85016
Attn: Laura Ortiz
Managing Principal

LIMITED WARRANTY DEED

FOR VALUE RECEIVED, the CITY OF FLAGSTAFF, an Arizona municipal corporation ("Grantor"), hereby quitclaims [subject only to the following paragraph] to EVERGREEN-TRAX, LLC, an Arizona limited liability company and its successors and assigns ("Grantee"), the real property located in Coconino County, Arizona, and described on Exhibit 1 hereto¹ (the "Property").

Grantor agrees to indemnify and hold Grantee and Chicago Title Insurance Company, a Nebraska corporation ("CTIC"), harmless for, from and against any loss or damage sustained by Grantee by reason of the United States or its successor [other than BNSF Railway Company, a Delaware corporation] enforcing any implied condition of reverter (a "Reversion") existing or asserted at any time with respect to any Property which was part of the "right of way through the public lands" including related "grounds for station-buildings, workshops, depots, machine shops, switches, side-tracks, turn-tables, and water-stations" described in Section 2 of the Act creating the Atlantic and Pacific Railroad Company, 14 Stat. 292 (1866) (a "Claim"). Grantor will take such action to resolve any Claim which may be asserted as may be reasonable and appropriate to resolve such Claim by appropriate agreement, declaratory or legislative relief or otherwise. If and when any Reversion is finally determined to then be non-existent or unenforceable, and has not then commenced upon the determination of a prior estate, this paragraph will be of no further effect.

Subject only to the preceding paragraph, any prorations agreed to in writing by Grantor and Grantee, and any standard form commercial owner's affidavit provided to CTIC regarding parties in possession, construction in progress and similar matters, all Property is conveyed subject to all valid interests as may appear of record.

EXECUTED on _____, 2014.

CITY OF FLAGSTAFF

By _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

¹ Use legal descriptions from 6/18/2014 Shephard & Wesnitzer, Inc. ALTA/ACSM survey, Job No. 11294.

STATE OF ARIZONA)
) ss.
County of Coconino)

The foregoing was acknowledged before me this _____ day of _____, 2014, by **Gerald W. Nabours**, the Mayor of the City of Flagstaff, an Arizona municipal corporation, on behalf of the corporation.

Notary Public